Fox Rothschild Podcast

The Presumption of Innocence Podcast Series: Episode 2

Avoid Falling Prey: The Dirty Dozen and Other Trending Tax Scams

Featuring Matthew Adams and Matthew Lee

Adams: Hello, everyone, and welcome to “The Presumption of Innocence,” a podcast brought to you by the White-Collar Criminal Defense and Regulatory Compliance Practice at Fox Rothschild. My name is Matt Adams, and I'm one of the co-chairs of the practice group.

Today I have the distinct pleasure of being joined by the other Matt, my co-chair of the practice, Matt Lee. Matt is a partner in our Philadelphia office and a former U.S. Department of Justice trial attorney. His practice focuses on tax, money laundering, health care, securities, public corruption, antitrust, Foreign Corrupt Practices Act, False Claims Act and other fraud offenses. He's a frequent contributor to *Law360* on tax and financial crimes-related matters and author of the Practicing Law Institute's *Foreign Account Tax Compliance Act Answer Book*.

Matt, welcome to “The Presumption of Innocence.” You and I are going to be taking turns co-hosting as we proceed with new endeavor here, but today I have the pleasure of interviewing you related to the 2021 Dirty Dozen list published by the IRS. Now this list is compiled annually and lists a variety of common scams that taxpayers may encounter any time, but particularly during filing season. As we're coming upon the 2021 tax year filing season in the next few weeks and months, people are going to be either preparing their returns or hiring someone to prepare their returns. And as a general matter, Matt, before we get into the specific expected trends over the next year or so, what are some of the big picture things you're seeing right now with IRS enforcement?

Lee: Matt, thanks for that great introduction. It's terrific to be here. Over the last 18 months or so, I've witnessed two big trends that the IRS is really focused on. The first is something that we all have heard and lived through, and that is, of course, the COVID-19 pandemic. The IRS, like lots of other law enforcement agencies, has seen what I think is a terrific diversion of its resources. You're fighting COVID-19 fraud in a variety of fronts, and that has taken the IRS away from its traditional enforcement agenda, which is focused on what you might think of as garden variety tax evasion/tax fraud type of offenses, and really focused on going after fraudsters who are taking advantage of this significant amount of money that Congress has appropriated throughout the entire economy to various sectors to help businesses and individuals get through the pandemic, which we're all still living through.

In addition to COVID-19 fraud, the other big area I see for the IRS is cryptocurrency. Now, this is something that the IRS has been looking at for a number of years. This is not new, but with the incredible increase in value of probably the most common cryptocurrency, Bitcoin, over the last two years or so, there's been a lot of interest among individuals in getting involved in cryptocurrency, investing in this new asset class. The IRS is, I think, laser-focused on tax compliance. And by that, I mean, are individuals who own cryptocurrency and engaging in cryptocurrency transactions reporting those on their tax returns and are they paying taxes on that? And I think if we were interviewing an IRS representative, they would say that there is a significant compliance gap. Meaning, there's a big gap between the number of taxpayers who are engaged in cryptocurrency transactions as compared to those who are actually reporting them on their tax returns. So, there's a lot of unaccounted for revenue that could come into the Treasury, so the IRS wants to go after and find these individuals who aren't properly reporting and paying taxes on their crypto investments.

Adams: Matt, I think you and I have both experienced — and we've definitely done significant speaking publicly about this very topic — but with the IRS focused so heavily on COVID-19 fraud and, in particular, joining these task forces that have seemed to pop up all over the country – multidisciplinary task forces — does the IRS really have resources to go towards its bread and butter still? Or is it sort of shifting its focus to combating COVID-19 entitlements or what-have-you fraud? And is that detracting in any way from its traditional tax enforcement efforts?

Lee: Well, I think the reality is that the IRS, as a government agency, has suffered from more than a decade of budget cuts from Congress that have really decimated this agency in many ways. There has been terrific attrition in the form of retirements, individuals just leaving their employment at the IRS. These positions are not being filled because Congress has repeatedly, year after year after year, cut the IRS's budget. So we're really at a point now where this agency, which is, of course, responsible for collecting all of the revenue that's due to be paid to the U.S. Treasury, which is not an insignificant task, has its staffing levels at some of its lowest levels in more than a decade. And that's put a real strain on the IRS's ability to carry out its traditional enforcement agenda.

Now, that's starting to change. Congress is starting to put more money into the IRS. And in fact, the Biden administration is looking to significantly increase the budget allocation for enforcement of the IRS. It remains to be seen how that plays out in the political process. But there does seem to be a recognition in Congress that it is important to fund the IRS and to give the IRS the tools and the resources it needs to carry out its job to make sure that we have a high voluntary tax compliance rate in this country.

But in the face of all of that, there's budgetary cuts and loss of the workforce. One of the things that the IRS is doing — and I think is doing a good job of — is shifting to relying more on, essentially, technology to help it do its job. By technology, I'm referring to things like data analytics and artificial intelligence. The IRS, at this point, gets more data about the activities of taxpayers, not just domestically, but really around the globe. It's getting more data than it ever has in its history, and that data really has valuable information in it. The IRS is using technology to sort through that data to follow the money, which is something the IRS does and does quite well, to help generate leads and to build cases. So, it's a tale of declining resources on one hand, but really, I think increased reliance — and successfully so — on using technology to help sort through data and to do things that frankly would take months, if not years, for humans to do.

Adams: I think, Matt, we've seen that in other spaces too, like health care and certainly the COVID-19 fraud area as well, because it seems like the government is able to harness significant aspects of data with relative ease. Not only that, they can almost do the sort of juxtaposition exercise when talking about things that they may have on file. For example, a taxpayer versus what might get submitted to the government in connection with a PPP loan application or something like that. So, I think from what I'm hearing from you, the trend with respect to tax enforcement really is modeling what we've seen in other spaces as well.

So, moving then directly to the central focus of our conversation today, what exactly is the Dirty Dozen, and why does it provide a sort of indicator, if you will, of IRS enforcement activity generally?

Lee: So, the Dirty Dozen has its origin a number of years ago. The IRS decided that it was going to publicize annually a list of some of the worst tax schemes, scams, frauds, that are out there. Someone at the IRS came up with a catchy name and they call the Dirty Dozen. And so, every year now we have the IRS announcing — to great fanfare — the components of the Dirty Dozen. And it is what it sounds like: it is the list of the top 12 or so worst scams that the IRS sees. Some of these scams are repeat offenders. You see them year after year. Others are new.

The most recent Dirty Dozen has a lot of new entrants, which we'll talk about, but it really is a summary of what the IRS sees as the worst of the worst. I believe it's an indicator of where the IRS is going to focus its enforcement priorities in going after these scams.

It's also for education purposes. It's to educate taxpayers to watch out for these things, to be mindful that they could fall prey to some of these scams, of which we'll talk about — social media scams, phishing attacks, phone calls threatening to arrest people if they don't pay their taxes, things like that. So, it's really also meant to educate the public as well.

Adams: I got one of those over the weekend, actually the phone call, saying, you know that you're going to be referred for criminal prosecution if you don't give your Social Security number immediately because you're delinquent in your taxes. Rest assured, anyone who might be listening to it to this podcast: that is not typically how the government conducts an investigation. And certainly, they don't ask you through an automated phone call what your Social Security number is.

A couple of new offices I've seen established in connection with IRS enforcement activities… Matt, and you highlighted for us from the outset sort of this contraction of the IRS's sort of human resources, but we also see creation of new offices in the midst of harnessing this big data to create 21st century methods of enforcement. It seems like the IRS is starting to also reorganize itself in manners that are intended to be potentially more efficient and bring some of this big data and modern enforcement techniques to bear.

Could you talk to us a little bit about the newly established Office of Promoter Investigations and also the IRS Fraud Enforcement Office? Both of those were recently established right?

Lee: So, they were both announced, unveiled, I guess, at really around the start of the pandemic. I don't think there was any correlation. That just was when it happened. Both of these offices were announced early on in 2020. The Fraud Enforcement Office is a really interesting one. The person who is running that office is someone who had a long career working on the criminal side of the IRS. This individual was an IRS special agent. So, he comes from a criminal background. And I think if there's nothing else that you need to know, that just gives you a sense of who is at the top of this new fraud enforcement office: it's a criminal investigator. The idea, though, is to establish an office that is going to work collaboratively across all the different divisions of the IRS. Of course, you've got the criminal side of the IRS, you've got the civil side of the IRS, which conducts audits of taxpayers, and then the third area is the collection side of the IRS, and that's where they collect the money. Those are the bill collectors. The idea of the Fraud Enforcement Office is to oversee and ensure that there is exchange of information across all these decisions about fraudulent activities. Fraud is not just a criminal issue. There is civil fraud. The IRS can go after taxpayers committing fraud on a tax return. Similarly, it doesn't have to be a criminal charge. The idea really behind this whole office is to raise the profile and awareness of fraud. And also, I think, really interestingly, this office is going to work with other law enforcement partners — including at the state level, so state revenue departments where the IRS is already sharing some information — and it's going to strengthen those relationships, and I think you'll see more information sharing between the IRS and the state counterparts.

The other big development in the form of a new office of the IRS, Matt, is what you said, the Promoter Investigation Coordinator. This is a newly created position in February of 2020 and the idea here is to focus on what the IRS has traditionally called tax shelters.

Promoters are the professionals who go out and sell these tax shelters. So, promoters are oftentimes attorneys or accountants or other types of professionals who are marketing and selling what the IRS would call fraudulent tax shelters to investors. Two areas that this Promoter Investigation Coordinator is focusing on also show up on the Dirty Dozen. They are conservation easements — we'll talk about that at the moment — as well as micro-captive insurance. I would say those are probably the two top tax shelters the IRS is focused on at this moment. A lot of resources going into both of those, we'll talk more about that later. But I think both of the establishments of these two offices really shows that the IRS is looking to step up its game, cracking down on fraud and cracking down on tax shelters.

Adams: And so, when we dig into the 2021 Dirty Dozen list, it really can be unpacked topically. The way I see it, we have pandemic-related scams, which has really come as no surprise given what we've all been living through for the better part of the last two years. Then personal information cons — which seem to be the traditional identity theft types of crimes that we've seen for a while now — with the IRS call ruses focusing on unsuspecting victims (so sort of taking advantage of maybe the most vulnerable), and then schemes that persuade taxpayers into unscrupulous actions sort of like what you were just talking about.

So, let's start with the pandemic-related scams as we unpack the 2021 Dirty Dozen list. The IRS calls them Economic Impact Payment Theft and unemployment fraud, leading to inaccurate taxpayer filings. Matt, talk for a bit about these types of common, pandemic-related tax scams, with a particular focus on how they may sort of cross over into what we've seen, and you and I have done a fair amount of talking about, which is the issues involving COVID-19 economic impact theft.

Lee: Yes, so these are the very first two on the Dirty Dozen list — and I don't think the Dirty Dozen is set up in the order of there's a number one or number two — but these two are the first two, and I don't think that's a coincidence. So, the economic impact payments: these are the stimulus checks that Congress authorized early on in the pandemic and they've been reauthorized a number of times. These are the checks that have gone out across the United States to taxpayers who qualify for these payments. These have amounted to billions and billions of dollars of government spending, and not surprisingly, there's been a significant amount of crime associated with these checks going in the mail, from simply stealing checks out of the mailboxes to more advanced identity theft techniques in which fraudsters try to get their hands on the checks. And again, there were multiple iterations of the stimulus checks that have gone out over the last 18 months. It's just an extraordinary amount of money, and it's no surprise when you're talking about that much money going out the door of the U.S. Treasury, that fraudsters are attracted to that opportunity. And they've been successful. There's been no doubt that they've been successful. The corollary is unemployment fraud. No surprise that unemployment rates have skyrocketed through the pandemic, and as a result, unemployment claims have similarly increased to almost unheard-of levels over the last almost two years. And not surprisingly, there have been instances, many of them, of fraudsters submitting false unemployment claims through identity theft, posing for someone claiming to have lost their job and then getting their check and then the actual person at the end of the year gets a 1099 from their state or local municipality government, saying, "We paid you unemployment compensation in X dollar amount." Of course, they never got the checks, but they are getting a 1099. These two I'd say are in the educational category: to educate taxpayers to be on the lookout for these types of scams because they're really prevalent, and frankly, they're not letting up. They're still out there and they're still continuing.

Adams: I could just tell you from my experience on this side of it, mostly dealing with PPP fraud cases for the last couple of years now, there is always an interrelatedness to some of these tax issues as well. It seems like where you see one, you quite often see the other. That's something I think we're going to continue to see now for the better part of the next decade in light of how just how many trillions of dollars in stimulus money has been injected into the economy.

Moving to sort of the second topical area of the 2021 Dirty Dozen list, we have what the IRS refers to as personal information cons, and to me, this sounds like your classic identity theft. This is not something new, but may be exacerbated by the pandemic. Matt, mostly these are some scams that have been around for a long time. Talk to us a little bit about these.

Lee: So these scams aren't anything new. It seems like they've accelerated or picked up in frequency during the pandemic, but they certainly predated the pandemic. They range from social media scams where someone might contact you through a Facebook page or another form of social media, trying to trick you into submitting your personal information: your name, your address, your Social Security number, your date of birth. You give that critical information that can be then used against you in terms of submitting, for example, a tax return to the IRS and getting a refund. A very common identity theft example that we've seen long, long before the pandemic is the submission of a tax return to get a refund, while the unsuspecting taxpayer in question has no idea that the returns have been even filed or the check had been issued.

There are these phishing scams where fraudsters will send an email to an unsuspecting individual, and it looks like a legitimate email that might be coming from your employer or purportedly a close family friend asking for information, when in fact the person behind that email is not someone you work with, nor is it a close friend or family member. It's in fact a fraudster posing as someone you trust, and they're asking for your personal information that way.

We've seen an uptick in ransomware attacks. This is when fraudsters use malicious software to attack your computer or your computer server, and they hold your data essentially ransom unless you pay money. They'd say if you don't pay us a certain amount of money — usually it's in cryptocurrency — they'll either delete all your sensitive information or worse, they'll release it to the public.

And then, phone calls. Let's talk about that for a minute, because you mentioned that you were a victim of a phone call over the weekend. This has been going on forever. You get a phone call from someone claiming to work for the IRS saying you owe taxes and that if you don't pay within 24 hours, the police are going to come and arrest you. And that is just not the way the IRS operates. It is *not* the way the IRS operates. I tell clients, friends, family, to be extraordinarily wary of any phone call coming from someone claiming to be the IRS. Generally, the IRS will send you a letter. You generally get a written piece of correspondence. You're not getting a phone call. And if you do get a phone call from the IRS, what I advise is take the name and number down of the person and tell them you'll call them back. If they are a legitimate IRS employee, you call them back and have a conversation. But 99% of the time, it's a fraudster and they won't give you their name and they won't give you their phone number and they will hang up and you know then that it was fraud and you didn't give away any information. I also think it's important to report this type of fraud to the authorities. The only way this stuff is going to stop is if law enforcement knows about it, and it's admittedly hard to crack down because a lot of these calls are coming from overseas. But I do think it's important that we report it because otherwise we're going to continue.

Adams: Yeah, it's funny you should mention that, Matt. I happened to be, for whatever reason, scouring through a recent newspaper article and I came across some of the police blotter in a local suburban town. I would say, 90%, or at least 80% of the major things that were reported in that police blotter happened to involve these types of scams. Typically, it would appear that it's a lot of preying on senior citizens in particular, and other folks who may or may not be technologically savvy even, and really actually think that these are true calls. Those communities — in particular the senior population — seem to be at risk for these types of scams.

Let's then move down the list as presented and focus a little bit for a second on what the IRS calls ruses focusing on unsuspecting victims. And I know that this really has three components, three core components, that the IRS has published this year. To me, these things really are, again, something that are not new but may very well be exacerbated because of the climate in which we're living in the pandemic right now. So why don't you unpack these for us, Matt?

Lee: Yeah, agreed, these are not new, but I think they are getting worse. So, the three key components of this portion of the Dirty Dozen, which focuses on unsuspecting victims, are fake charities, senior/immigrant fraud and then offer in compromise mills and other unscrupulous tax return preparers. Fake charities are a pretty easy one. Got to be wary of any charity that's asking you for money, saying you can get a charitable contribution. Now, to be sure, there are lots of very legitimate and worthy causes to which you can contribute, but we've seen a rise in fraudulent charities and organizations claiming to be a 501(c)(3) that allow you to take a deduction. A lot of them relate to the pandemic, in fact. This is an area where you just have to be really careful. Do your homework before you decide to make a contribution to an organization that you're not familiar with. You want to make sure that it is a legitimately recognized, tax-exempt entity by the IRS.

Senior and immigrant fraud, Matt, you already mentioned that earlier. These are populations — both seniors and immigrants — who are unfortunately more susceptible to falling victim to these types of fraudulent schemes, and fraudsters are taking advantage of that. Many of these social media schemes, phone calls and phishing attempts are targeted at seniors or immigrants who are new to this country who may not be so tuned to the hallmarks of fraud or red flags that they should be looking out for. And unfortunately, these fraudsters many times are succeeding in taking advantage of these unsuspecting groups and getting money from them or other valuable personal information.

Then lastly, what the IRS calls offer in compromise mills. These are firms that say they'll resolve your tax debt for pennies on the dollar; they will help you submit an offer in compromise to the IRS, wipe your debts clean. Now, offers in compromise are a completely legitimate tool that is used by the IRS and by tax practitioners all the time to try to work out arrangements for taxpayers who can't pay their full debts to the IRS. So, there's nothing inherently questionable or concerning about offers in compromise. But what you need to be careful of is these firms that make promises that just seem too good to be true about how they'll wipe out your tax debts. And then along the same lines, the IRS always says — and I think appropriately so — that be wary of unscrupulous tax return preparers. So, a good example of that is anyone who offers to prepare your tax return for you but won't put their name on the return. That's called a ghost return. And any time a tax return preparer is unwilling to put his or her name on the return, which is required by law, that is a big red flag, something to watch out. When you're looking for someone to help prepare your taxes every year, be careful. Do your homework, get recommendations from people you trust and investigate the person that you're considering hiring. Make sure they know what they're doing and that they are trustworthy. There are plenty of very good and trustworthy tax preparers out there who will do it and do a good job. There are, unfortunately, lots of unscrupulous preparers, though, who will take advantage of you and can create more problems for you, so you just need to be wary.

Adams: Thanks, Matt. And now as we move into sort of the final area of the 2021 Dirty Dozen list, I'm struck by the fact that the first three are really the traditional fraud areas, right? They're the identity theft, they're the blatant theft of impact payment, they're fake charities and preying on seniors and immigrants who might be uniquely susceptible to falling to some kind of fraudulent ruse. But what I see in the final grouping of this year's Dirty Dozen from the IRS is a bit of a more sophisticated approach to fraud, which could potentially convince a taxpayer that has entirely legitimate motives. The difference between tax avoidance and tax evasion, right -- nobody likes paying taxes -- and utilizing legitimate means to offset your tax liability is a very sophisticated and entirely legitimate thing. But what I'm seeing in this final grouping of the IRS's 2021 Dirty Dozen list is what they call schemes that persuade taxpayers into unscrupulous actions. And for the first time, I see this being sort of less obvious, and a lot more folks might get easily sucked into one of these schemes just by virtue of the fact that on its face, they kind of present as one of these sophisticated means of trying to engage in a level of offset for the tax liability. So, Matt, as we unpack these, am I correct in that characterization, that this final grouping is where that line is crossed between tax avoidance and tax evasion?

Lee: Yes. The answer to that question is most definitely, yes. It's possible these are — as I said at the outset of our discussion today — these are the what the IRS would call the out-and-out tax shelters, the abusive tax shelters. The first two on this list I've already briefly touched on, the first being syndicated conservation easements, the second being abusive micro-captive arrangements. These are the two, I would say, the two top priority tax shelters that the Office of Promoter Coordination is focused on, and we are seeing a significant amount of IRS activity and resources being devoted to both of these arrangements.

The conservation easement transaction...we could spend a long time talking about that. But very briefly, this is a real estate transaction where you contribute a portion, not the entire property, but a portion of the property to a 501(c)(3) charitable organization to create what is called a conservation easement, to give a portion of that land dedicated to public space. Now in general, there's nothing wrong with that, nothing illegal about that. But the IRS is really focused primarily on the value of the easement and on the syndication of the easement interest. So, what the IRS is focused on is arrangements where a whole bunch of investors get together and they pool their resources and contribute this easement for conservation purposes and in return, the investors get a charitable contribution on their tax return. Where the IRS takes issue with this is when the value of the charitable contributions significantly exceeds the actual value of the donated land. There have been already some criminal cases that have been filed in this area. There are a lot of new investigations that are underway in this area. There are a ton of civil cases that are being litigated, and there are hundreds, if not thousands, of audits being conducted by the IRS in this area.

Adams: Matt, before we leave that one, it would strike me that one of the central issues that needs to be done in there in terms of trying to legitimize one of these is to ensure that the value is objectively appropriate, correct?

Lee: Exactly. The dispute is going to be, generally in these cases, the value. And if the value of the donation is supportable then — again I'm oversimplifying — you're probably OK. It's where the value of the charitable contribution claimed on a tax increase is exponentially larger than the value of the donated land, that's when you start to cross the line potentially between civil and criminal.

Adams: It strikes me that it's a flashback to some of the mortgage fraud that went on before the Great Recession, say, pre-2008, where some of the land transactions were being inflated with unrealistic valuations in order to jack up the amount that was secured from a bank loan. Something along those lines, but this time, and for purposes of trying to inflate a tax write-off.

Lee: That's right. The other one is the abuse of micro-captive arrangements. This is an insurance arrangement. So again, in theory, there's nothing illegal about having a captive insurance arrangement, and lots of large companies do that. They own their own insurance company and that insurance company provides insurance to the business to insure against a wide variety of types of claims that could arise. Where the IRS starts to get interested is when it doesn't really look like insurance. And by the way, there are lots of tax benefits you can claim when you have a captive insurance, and that's why companies do this. But where the IRS starts to get interested is when it doesn't really look like insurance. It doesn't really look like an insurance policy when no claims are submitted, no claims are paid, the premiums that are paid for the insurance are not in line with typical premiums you would pay in the market. This is when the IRS starts to look at, is this really a legitimate arrangement, or is this a tax strategy to provide tax benefits to the company that owns the captive insurance? This is an area where the IRS — like in this syndicated conservation easements area — the IRS is devoting a lot of resources. This is an area where we expect to see significant additional activity in the form of audits, tax litigation and probably criminal activity. I haven't seen it yet, but I suspect it's coming.

Adams: So, rounding out this list of more sophisticated tax schemes to essentially inflate the amount of a deduction in order to offset taxable income, we hear the IRS talk about abusive use of the U.S.-Malta treaty. Now that seems to be something fairly obscure. What's that all about?

Lee: Obscure, indeed. This is the first time that this has shown up on the Dirty Dozen, as far as I am aware, in all the years that I've been tracking the Dirty Dozen. This sounds like an incredibly obscure tax strategy, but the fact that it shows up on the Dirty Dozen shows that it's gaining in popularity. So yeah, someone came up, apparently, with this notion that there are tax benefits that can be recognized by U.S. taxpayers by taking advantage of the tax treaty between the United States and Malta. So, the theory goes, if you contribute property that has appreciated in value — whether it's a stock that's increased in value or real property that's increased in value — and that would otherwise cause you to recognize this significant gain if you sold that property. Instead, you contribute that property to a pension plan in Malta and it allows you to defer recognition of that significant gain you would otherwise have to pick up and pay taxes on. I've got to tell you this is an obscure one, to be sure. But again, what I said a moment ago, the fact that it's showing up on the Dirty Dozen list shows that the IRS is, believe it or not, seeing more and more of this trying to be used by individuals who are trying to game the system.

Adams: Maybe it's the new Swiss bank account now that that's been solidly locked down as a tax avoidance or tax evasion tool for several years.

Rounding out the list of the Dirty Dozen as it relates to these more sophisticated schemes, the IRS talks about improper claims of business credits and improper monetized installment sales. The business credit thing I would love you to unpack for us. I can tell you from personal experience on the monetized installment sales, I have been seeing more and more of this pop up in my practice, particularly as businesses try to maybe cash out and exit the field through a merger or acquisition. But why don't you unpack those two final areas for us so that we can close out this discussion on the Dirty Dozen. And in particular, really, this seems to be geared towards the business community.

Lee: So, the first one, this improper claims of business credits, it really focuses on… I mean, there are lots of credits that the Internal Revenue Code authorizes, and again, nothing inherently improper about claiming credit on your tax return. Hundreds of thousands, if not millions, of taxpayers — individuals and businesses — do it every year. This focuses on one particular credit that arises out of research and experimentation. Like any other credit available under the Internal Revenue Code, you have to prove that you're entitled to claim the credit. You have to substantiate your eligibility for the credit, and the IRS, seeing that certain taxpayers are claiming this particular credit, they're not properly substantiating their eligibility for this particular credit. So, I think it's something to be wary about when you try to claim a credit on your tax return or your preparer or someone else tells you that you should claim a particular credit. Just proceed cautiously, and if you do want to claim that credit, you want to make sure that you actually qualify for it and can substantiate it if the IRS were to ask questions about it.

And then the last item is this improper monetized installment sales. This is a little bit like the Malta scheme we talked about just a minute ago. This is when you have appreciated property and you're trying to avoid paying the gain on that appreciated property. Again, could be stock, could be real property. This particular scam would tell you if you want to try it that you can use an intermediary, a middleman, so to speak, to whom you would sell the property to and then they will repay you interest only and defer your gain until something is significantly down the road. Again, it's a way to defer reporting gain on a sale of appreciated property and then having to pay taxes on it. This sort of intermediary type transaction is something that the IRS has seen a lot of over the years. This one is, again, focusing on what they call monetized installment sales. It's sort of a new twist on an old scheme that's been around for some time, but it makes the Dirty Dozen this year, I believe, for the first time. And again, I think it's a reflection that the IRS is seeing more and more of these, and that's why this one's made it to the Dirty Dozen for 2021.

Adams: And if I'm not mistaken, Matt, the theory behind why it would become attractive to maybe the unsuspecting is because you're trying to avoid realizing that gain all at once. Is that correct?

Lee: That's exactly right. I mean, if you sell a piece of appreciated real estate today, you've got to recognize all that gain as capital gain and pay a pretty significant tax bill, and these schemes at least purport to try to defer that recognition in year one. And to put it out, you'll put it off into the future properly, which of course, the Internal Revenue Code won't let you do. These are schemes that at least try to get around that that well-established rule.

Adams: And in the one or two instances where I've encountered these over the last couple of years, it's really been involved where people are looking to retire and they're selling a business or a piece of property or sort of a combination of the two. They're scaling down, they're retiring, they're cashing out, they may have been involved in this business for 30-40 years. Their basis is really low because they built it over the course of decades from basically nothing. And lo and behold, they want to try to defer that tax hit over a period of years. I can see why, even to the totally legitimate and well-informed person without really nefarious motives, that could be an attractive thing and something that you definitely want to have legal advice on as you try to engage in potentially exploring it.

Lee: Yeah. And I think the takeaway from all of these is this: if it sounds too good to be true, that it probably is. So be careful if someone tries to sell you one of these schemes. As Matt said, start with your CPA or attorney. Proceed cautiously before you go in and get involved in any of these arrangements that we've just described here, because if it sounds too good to be true, it probably is.

Adams: And to that point, Matt, the old saying goes: couple of things you can't avoid, death and taxes, right? Well, that's all the time that we have for this episode of "The Presumption of Innocence." We thank you for joining us, and we look forward to you joining us in the future.

If you have any questions, please reach out to us. We can find us on the internet at www.foxrothschild.com. My name is Matthew Adams. I was joined today by my co-chair of the White-Collar Criminal Defense and Regulatory Compliance Practice, Matthew Lee, and we look forward to exploring these hot button topics with you in the near future. Thanks for joining us. Talk to you all soon.